

Clifton W. Albright - CA Bar No. 100020
clifton.albright@ayslaw.com
Lucien A. Schmit III - CA Bar No. 116151
lucien.schmit@ayslaw.com
Anthony J. Bejarano - CA Bar No. 223345
anthony.bejarano@ayslaw.com
ALBRIGHT, YEE & SCHMIT, LLP
888 West 6th Street, 14th Floor
Los Angeles, California 90017
(213) 833-1700 - telephone
(213) 833-1710 - fax

Attorneys for Defendant
CITY OF LOS ANGELES

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

THE LOS ANGELES POLICE
PROTECTIVE LEAGUE
("LAPPL"), et al.,

Plaintiffs,

vs.

THE CITY OF LOS ANGELES, and
DOES 1 through 50, inclusive,

Defendants.

CASE NO. CV 06-6390 VBF (MANx)

**DEFENDANT CITY OF LOS
ANGELES'S NOTICE OF MOTION
AND MOTION FOR SUMMARY
JUDGMENT OR PARTIAL SUMMARY
JUDGMENT**

Date: October 18, 2010

Time: 1:30 p.m.

Courtroom: 9
Hon. Valerie Baker Fairbank

Discovery Cut-off: 6/30/09

Final Pre-Trial Conference: 2/14/11

Trial: 3/01/11

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that Defendant City of Los Angeles will move this
3 Court for Summary Judgment or Partial Summary Judgment on October 18, 2010 at
4 1:30 p.m., or as soon thereafter as the matter may be heard in Courtroom No. 9 of the
5 United States District Courthouse located at 312 North Spring Street, Los Angeles,
6 California 90012.

7 Pursuant to the Court's Minute Order of July 19, 2010 (Document 322),
8 Plaintiffs' opposing papers shall be due within 21 days of the filing of this motion (*i.e.*,
9 by **September 10, 2010** if Defendant's moving papers are filed on August 19), and
10 Defendant's reply papers shall be due 14 days after service of Plaintiffs' opposing
11 papers.

12 Defendant seeks summary judgment on the grounds that the uncontroverted facts
13 establish that Defendant is entitled to judgment on each of Plaintiffs' three claims, and
14 this case as a whole, as a matter of law.

15 Alternatively, Defendant seeks partial summary judgment establishing the
16 following issues (including reference to pertinent proposed Uncontroverted Facts
17 ("UF")):

18 Issue No. 1: Plaintiffs' time spent on pre-shift and post-shift uniform
19 donning & doffing is not compensable (Supported by UF 1-36);

20 Issue No. 2: Plaintiffs' pre-shift and post-shift time spent on tasks
21 associated with uniform donning & doffing is not compensable (Supported by UF 1-36);

22 Issue No. 3: Plaintiffs are not entitled to compensation for time spent
23 cleaning or maintaining their uniform and equipment, which may be done
24 professionally, and for which compensation is provided under the MOUs' bargained-for
25 uniform, maintenance and equipment allowance (Supported by UF 37-39);
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1 Issue No. 4: Plaintiffs' time spent on pre-shift and post-shift maintenance
2 of the required contents of their War Bags is not compensable (Supported by UF 5-7,
3 40-49);

4 Issue No. 5: Disputed Activities involving cleaning, checking and oiling of
5 service weapons are not compensable (Supported by UF 50-57);

6 Issue No. 6: To the extent that any of Plaintiffs' time spent on Disputed
7 Activities is otherwise compensable, it is not enough to outweigh the applicable credits
8 for premium pay under 29 U.S.C. §207(h), so that Plaintiffs cannot establish liability
9 (Supported by UF 37, 58-66);

10 Issue No. 7: Based on the foregoing Issues 1 – 6, and the undisputed facts
11 placed in evidence before the Court, Plaintiff's first claim for relief lacks merit as a
12 matter of law (Supported by UF 1-66);

13 Issue No. 8: Since only the Department of Labor may seek injunctive relief
14 in an action under the Fair Labor Standards Acts for violation of the overtime provisions
15 of §207, Plaintiffs' third claim is without merit as a matter of law; and

16 Issue No. 9: Plaintiffs' second claim seeks declaratory relief, and provision
17 of such relief is discretionary. Because this claim is duplicative of the relief sought in
18 the first claim, and does not further the core purposes of declaratory relief, the Court
19 should exercise its discretion to dismiss Plaintiffs' second claim.

20 This motion is made following the conference of counsel pursuant to Local Rule
21 7-3 which took place on July 7, 2010.
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1 This motion will be based upon this Notice, accompanying Memorandum of
2 Points and Authorities, the Separate Statement of Uncontroverted Facts and Conclusions
3 of Law, Request for Judicial Notice, Exhibits attached to Defendant's Appendix of
4 Exhibits, and Declarations of Yvette Bass-Otis, Stuart Maislin, Truc Nguyen, Jodi
5 Wakefield, and Lucien A. Schmit III, the records and files in this action, and on such
6 other evidence and as may be proffered and allowed at the hearing.

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8 Respectfully Submitted,
9 DATED: August 19, 2010 ALBRIGHT, YEE & SCHMIT, LLP

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11 /s/ Lucien A. Schmit III
12 Lucien A. Schmit III
13 Attorneys for Defendant
14 CITY OF LOS ANGELES
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